Filed 3/6/19 Estate of Seaver CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

Estate of FRANK R. SEAVER, Deceased.	B276138 (Los Angeles County Super. Ct. No. P489597)
R. CARLTON SEAVER et al., as Co-Trustees, Petitioners and Respondents. v. GARTH PAGE et al., Objectors and Appellants,	

APPEAL from an order of the Superior Court of Los Angeles County, Lesley Green, Judge. Affirmed.

Donahue Fitzgerald, Lawrence K. Rockwell and Lorin B. Bender; Law Offices of TJ Meagher for Objectors and Appellants.

Musick, Peeler & Garrett, Richard S. Conn and Cheryl A. Orr for Petitioners and Respondents.

This appeal pits appellants Adam McAfee, Garth Page and Catherine Page-Lekas, three of multiple individual income beneficiaries of a testamentary trust created by decedent Frank R. Seaver in part for the benefit of his sisters, nieces and nephew and their descendants, against respondent the Seaver Institute (the Institute), a California public benefit corporation established by Seaver, whose purpose is to make charitable grants for scientific and medical research, education, public affairs and the cultural arts, also an income beneficiary of the trust at issue.[1] The V Trust specified that the individual income beneficiaries were to receive specific percentages of the net income, unless they experienced certain extraordinary expenses entitling them to a greater share, and that the rest of the income was to go to the Institute. When the V Trust terminated by its terms, 50 years after Seaver's death, a reserve account of accumulated income remained. Respondents R. Carlton Seaver, Christopher Seaver and Bank of America N.A., trustees of the V Trust, petitioned for instructions, expressing the view that the reserve should be paid to the Institute. The probate court concluded Seaver intended that the reserve be distributed to the Institute. Appellants challenge that ruling and ask that we independently review the probate court's construction of the language of the Trust. Having reviewed

---

[1] Because it was created by paragraph V of Seaver's will, the trust at issue is generally referred to as the V Trust or the Trust.

the ruling and the pertinent instruments, and exercised our independent judgment, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1963, Seaver executed a will which provided for the establishment of three testamentary trusts, including the one involved here. Seaver died October 31, 1964. Paragraph V of his will required the trustees to "immediately" divide the V Trust estate into separate portions to hold for the named beneficiaries for 50 years. The annual net income of each portion was to be paid or "applied for the benefit of" each individual beneficiary "during his or her life, in quarterly or more frequent installments." Seaver's sisters were each to receive the annual net income from eight percent of the Trust estate; his nieces and nephew were each to receive the annual net income from four percent of the Trust estate; the children of his nieces and nephew were each to receive the annual net income from two percent of the Trust estate; and the grandchildren of his nieces and nephew were each to receive the annual net income from one percent of the Trust estate. On October 8, 1965, an order was entered establishing the V Trust. The Trust's language paralleled the language of the will in all significant respects.

In addition to specifying the percentages of net annual income to be paid to each beneficiary, the Trust, echoing Seaver's will, provided: "In the event any beneficiary should be in need of additional funds for the necessary support of such beneficiary or his or her dependent, or to pay expenses

of accident, illness or other misfortune occurring to such beneficiary or his or her dependent, or for the reasonable education of such beneficiary or his or her dependent if a minor, the trustees may in their sole discretion pay to or apply for the benefit of such beneficiary so much of the current or accumulated income of the remaining portion of the trust estate as they deem advisable, giving due consideration to the circumstances and potential necessities of all beneficiaries." The Trust, as well as the will, included the following instruction: "In exercising their discretion under any such trust, the trustees shall give primary consideration to the welfare and interests of beneficiaries receiving life income therefrom as against remaindermen."

The will and Trust language also stated that after the V Trust's net annual income had been distributed in accordance with the above percentages, and after accumulation of a reserve in cash "equal in amount to two years' aggregate income payments to beneficiaries from portions of the trust estate held for their benefit," "[t]he rest of the net income" was to be distributed annually to the Institute "for scientific, educational, charitable and religious purposes."[2] In a 1979 order that dealt with a number of

---

[2] The Institute was also the estate's residual beneficiary. Under the will, after the specific bequests were met, the residue of Seaver's estate was to go to the Institute, to be held in trust for 15 eleemosynary institutions, including colleges, churches and a hospital, each to receive between two and 20 percent of the annual income. The Institute itself was an 11-percent beneficiary (*Fn. is continued on the next page*.)

issues, the probate court found that "the amount of aggregate income payments to individual beneficiaries during the two-year period commencing September 27, 1976, totaled $1,392,782.50." Accordingly, the trustees were to accumulate that amount in the income reserve fund "before making any income payments to The Seaver Institute."

The V Trust was to terminate 50 years from Seaver's death, and "the principal remaining shall be distributed free of trust to the eleemosynary institutions named in this will as beneficiaries of the residue of [the] estate." When the V Trust expired by its terms in October 2014, there were 44 one-percent individual income beneficiaries, 22 two-percent individual income beneficiaries, and one four-percent individual income beneficiary; the Institute received the remaining eight percent. The reserve had not been adjusted since 1979, and still totaled $1,392,782.50.

In March 2015, the respondent trustees of the V Trust filed a petition with the probate court seeking instructions concerning disposition of the reserve.[3] Respondents took the

---

of the residual trust. Like the V Trust, the residual trust was a 50-year trust, at the end of which time "the trust estate then remaining shall be distributed free of trust among the beneficiaries thereof in proportion to their beneficial interest therein at that time."

[3] The trustees included R. Carlton Seaver and Christopher Seaver, who were members of the board of directors of the Institute and income beneficiaries, and acknowledged having a potential conflict of interest.

position that the reserve "may not be distributed to the percentage beneficiaries," as they had "received the distributions which they were entitled to receive" and there was, in the view of respondents, "nothing in the [V Trust] language stating or even implying that the percentage beneficiaries share as such in the Reserve on termination of the Trust." Moreover, it appeared Seaver did not intend the 15 eleemosynary institutions designated as the remainder beneficiaries to receive the reserve because the will expressly stated those institutions were to receive "'the principal remaining'" in the V Trust when the Trust terminated, not everything remaining.[4] Respondents took the position that the reserve should be distributed to the Institute, as it was entitled to receive income in excess of that distributed to the individual beneficiaries, and the reserve consisted of undistributed, unallocated income.

Appellants Page and McAfee, two of the individual income beneficiaries, filed an opposition.[5] They agreed that the reserve was not part of the "principal" of the V Trust and, therefore, should not go to the eleemosynary institutions entitled to the remainder. They contended that

---

[4] By way of contrast, paragraph VIII of the will, directing the establishment of the residual trust, stated that when that trust terminated after 50 years, "the trust *estate* then remaining shall be distributed free of trust among the beneficiaries thereon in proportion to their beneficial interests therein at that time."

[5] The probate court treated the opposition as an answer, and overruled respondents' demurrer to it.

Seaver's intent was that the reserve go to the individual income beneficiaries, as it had been set aside for their support, illness, accident, misfortune or education.[6]

Appellant Page-Lekas, another individual income beneficiary, filed a petition to determine distribution rights. She similarly contended that Seaver had intended that the reserve be distributed to the individual income beneficiaries when the V Trust ended, because they were the parties specified to receive the benefits of the reserve, and the Trust language required the trustees to give "primary consideration" to the welfare and interests of the life beneficiaries.

Prior to the hearing, the parties stipulated to a number of facts, including: (1) "Prior to the expiration of the term of the [V] Trust, the Trustees had each year paid a minimum of one percent (1%) of trust income to each individual income beneficiary"; (2) "As of the year ending October 31, 2014, a one percent income interest approximated $58,000.00"; (3) "All income not allocated to individual income beneficiaries

---

[6] Page and McAfee also filed a competing petition for instructions, in which they asked the court to appoint a trustee to continue the Trust, administer the reserve and distribute it based on the income beneficiaries' needs for support or the support of their dependents, to pay the expenses of accident, illness or other misfortune, or for reasonable educational benefits. On appeal, appellants no longer contend that the termination of the Trust should be delayed to permit the reserve to be paid out to those who can currently establish having incurred the requisite expenses.

or used to replenish the Reserve was distributed annually to The Seaver Institute as residual income beneficiary"; (4) "The income beneficiaries received income after, or 'net of', deductions for fees and costs"; (5) "Under the Trust, the Trustees have had discretion to make payments in satisfaction of certain needs of individual beneficiaries[; t]he Trustees are not alleged to have breached any duty in acting upon applications for discretionary distributions or otherwise"; (6) "During the fifty (50) years following the death of trustor Frank R. Seaver ending on October 31, 2014, one or more individual income beneficiaries of the Trust incurred expenses for healthcare and/or education for themselves or a minor, but neither applied for a distribution for such expenses, nor received a distribution for such expenses"; (7) "Some individual income beneficiaries requested discretionary distributions, and some of those requests were denied and some were granted"; (8) "For 50 years following the death of Frank R. Seaver, the individual beneficiaries received annual distributions from income generated by the Trust based on their percentage share of the Trust"; (9) "Some of the individual beneficiaries received additional discretionary distributions"; (10) "The Seaver Institute received unallocated income after the reserve was fully funded"; (11) "The Seaver Institute did not receive distributions from the Reserve."

The parties identified a number of issues for the court to resolve, including: "Whether, under the terms of the Trust, on expiration of the fifty (50) year term, the Reserve

should be distributed solely to The Seaver Institute and not the individual income beneficiaries"; "Whether, under the terms of the Trust, on expiration of the fifty (50) year term, the Reserve should be distributed to the individual income beneficiaries based on their individual percentages, with remaining percentages, if any, to be distributed to The Seaver Institute, and if so . . . [w]hether . . . the Reserve should be distributed to the individual income beneficiaries based on their needs for additional support."

On April 14, 2016, the probate court held a hearing at which the court ruled on the stipulated issues. The court found that the reserve should be distributed solely to the Institute and not to the individual income beneficiaries.[7] At the hearing, the court stated that "the trustor's intent [was] clear" and that "distributing income to the beneficiaries, either for need or on a regular annual basis, ended after 50 years." The order that issued following the hearing, dated May 6, 2016, set forth the court's ruling concerning the proper interpretation of Seaver's intent, and instructed counsel for respondents "to prepare orders respecting the above-referenced Petitions and objections consistent with the

---

[7] The court also found that R. Carlton Seaver and Christopher Seaver had a conflict of interest in seeking distribution of the reserve to the Institute, but that the conflict was expressly or implicitly consented to by Seaver and did not affect the trustees' right to bring the petition for instructions.

ruling set forth herein." Respondents filed a notice of entry of order on May 12. A notice of appeal was filed July 11.[8]

DISCUSSION

A. *Appealability and Timeliness of Appeal*

Respondents contend the appeal was premature because the May 6, 2016 order was interlocutory, and "[w]hile it may have stated the Probate Court's intentions in ruling on the cross-Petitions for Instruction," the final ruling did not issue until July 14, 2016. Appellants contend that the order was appealable under Probate Code section 1300, subdivision (c) [making appealable all orders "'[a]uthorizing, instructing, or directing, a fiduciary, or approving or confirming the acts of a fiduciary'"], section 1303, subdivision (f) [making appealable all orders "'[d]etermining heirship, succession, entitlement, or the persons to whom distribution should be made'" if they are "'[w]ith respect to a decedent's estate'"], or sections 1304, subdivision (a) and 17200, subdivision (b)(4), (b)(6) and (b)(12) [making appealable final orders "'[a]scertaining beneficiaries and determining to whom property shall pass or be delivered upon final or

---

[8] Respondents asked that we take judicial notice of certain events that transpired subsequent to the notice of appeal. We hereby do so. On July 14, 2016, the court signed the orders prepared by respondents' counsel formally granting respondents' petition for instructions and denying appellants' petition for instructions and petition to determine distribution rights.

partial termination of the trust,'" "'[i]nstructing the trustees,'" or "'[c]ompelling redress of a breach of trust'"].

We need not resolve this dispute. Rule 8.104(d) of the California Rules of Court permits a reviewing court to treat a notice of appeal filed "after the superior court has announced its intended ruling, but before it has rendered judgment," as having been filed immediately after judgment. The probate court announced its resolution of the only issue dividing the parties at the April 10, 2016 hearing, and instructed respondents' counsel to prepare an order respecting the pending petitions and objections consistent with its ruling. The court signed and entered the orders submitted by respondents, formally denying appellants' petitions and granting respondents' petition, on July 14, a few days after the notice of appeal was filed. Assuming the July 14 orders were the final, appealable orders as respondents contend, we may treat the appeal as having been taken from them as they represent the judgment entered after the court announced its intended ruling in the April 2016 hearing and in the May 2016 order.

B. *Interpretation of Trust and Allocation of Reserve*

Appellants contend the probate court misinterpreted the language of the V Trust in concluding Seaver intended the Institute to acquire the reserve when the Trust terminated in 2014. We have reviewed the Trust's language and the court's reasoning and, in the exercise of our independent judgment, conclude the court correctly

ascertained Seaver's intent. (See *Estate of Anderson* (1997) 56 Cal.App.4th 235, 241 [reviewing court independently determines construction of will where record discloses no conflict in the evidence or issues of credibility].)[9]

"'"The paramount rule in the construction of wills, to which all other rules must yield, is that a will is to be construed according to the intention of the testator as expressed therein, and this intention must be given effect as far as possible." [Citation.]'" (*Newman v. Wells Fargo Bank* (1996) 14 Cal.4th 126, 134 [explaining that legal provisions governing construction of wills "also apply to construction of a decree of distribution of a testamentary trust when the decree parallels that of the will"]; see Prob. Code, § 21102, subd. (a).) In addition, wills and trusts "should be interpreted with a view to preventing intestacies as to any portion of the estate." (*Estate of Strong* (1966) 244 Cal.App.2d 250, 256; see Prob. Code, § 21120.)

"The intent of the testator is first determined by the language of the will itself. [Citations.]" *(Estate of Kime* (1983) 144 Cal.App.3d 246, 261.) At the same time, "'in ascertaining the intention of the trustor the court is not limited to determining what is meant by any particular phrase but may also consider the necessary implication

---

[9] Because we conclude the probate court properly interpreted the instrument, we need not determine whether an interpretation in favor of appellants would interfere with the V Trust's generation skipping transfer tax exemption.

arising from the language of the instrument as a whole.'" (*Ammerman v. Callender* (2016) 245 Cal.App.4th 1058, 1074, quoting *Brock v. Hall* (1949) 33 Cal.2d 885, 890; see Prob. Code, § 21120 ["The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative."].) However, "the court, under the guise of interpretation, may not write a new will for the testator. [Citations.]" (*Estate of Casey* (1982) 128 Cal.App.3d 867, 871.) "It is not the function of a court to determine who in the normal course of events should be the objects of the testator's bounty, but rather, to determine who the testator did, in fact, intend to make the object of his bounty. It is not the province of the trial court or a reviewing court to remake a will.' [Citation.]" (*Estate of Dailey* (1982) 130 Cal.App.3d 993, 999, italics omitted.)

The probate court concluded Seaver intended the reserve to go to the Institute. The language of the V Trust, as well as the will, supports this conclusion. The language created the reserve, and set the conditions necessary for payment of any sums from it to the individual income beneficiaries -- "for the necessary support," "to pay expenses of accident, illness or other misfortune," or for "reasonable education of such beneficiary or his or her dependent . . . ." In addition, the language expressly required that the reserve be funded with a significant amount -- equal to two years of income distribution to the individual beneficiaries -- and that it never drop below that amount during the life of the Trust.

Given the sizeable amount of the reserve required by the Trust language and the narrow conditions authorizing any payment out of it, Seaver must have been aware that there would be surplus funds remaining when the Trust terminated, 50 years after his death. That he did not intend these funds to go to the 15 eleemosynary institutions entitled to the Trust's remainder is clear from the language stating the "the *principal* remaining shall be distributed free of trust to the eleemosynary institutions named in this will as beneficiaries of the residue of [the] estate." (Italics added.) That he did not intend these funds to go to the individual income beneficiaries can be derived from the fact that he defined their entitlement as specific percentage amounts -- from one to eight percent of net annual income from the Trust principal -- and stated they were entitled to funds from the reserve only when they met the specified conditions. The Institute, on the other hand, was entitled to all income not paid to the individual beneficiaries. The language expressly stated that after the V Trust's net annual income had been distributed in accordance with the specified percentages and the reserve fully funded, the Institute was to receive "[t]he rest of the net annual income . . . ." Moreover, the reserve was funded from income that would otherwise have gone to the Institute as residual income beneficiary. It is reasonable to conclude that Seaver intended this income to return to the Institute if the conditions for distribution to the individual income beneficiaries were not met.

We find support for our conclusion in *Estate of Charters* (1956) 46 Cal.2d 227, where the testator left his estate in trust, instructing the trustee to distribute to his daughter, Irene, once she turned 21, $200 per month, less any amount she received from his life insurance policy.[10] (*Id.*, 230, fn. 1.) As the life insurance policy paid Irene over $150 per month, the trust accumulated substantial income year after year. (*Id.* at p. 232.) The trustee filed a petition asking the court what to do with the accumulated income. (*Ibid.*) The court instructed the trustee to pay Irene a minimum of $200 per month and such additional sums necessary to provide her "reasonable support, care and comfort," and ruled in the alternative, that all the trust's income be distributed to Irene. (*Id.* at pp. 233-234.) The Court of Appeal reversed, finding the order "contrary to the express provisions of the decree of distribution": "The decree, incorporating the language of the will . . . [¶] . . . [¶] . . . plainly provides for $200 per month, no more and no less, and cannot reasonably be construed as providing that income in excess thereof shall be used for Irene's support." (*Id.* at p. 238.)

Also instructive is *Estate of Kincaid* (1959) 174 Cal.App.2d 84. There, the will stated: "'Should my daughter . . . predecease me then and in such event my said Trustee shall upon evidence of want satisfactory to him pay, use, apply or expend for the reasonable maintenance, comfort

---

[10] The remainder was to go to Irene's issue. (*Estate of Charters, supra,* 46 Cal.2d at p. 230, fn. 1.)

and support, or for the expense of accident, illness, or other misfortune of my grandson . . . such sums as in the discretion of the Trustee may be necessary to be so expended.'"[11] (*Id.* at p. 85, italics omitted.) The testator's daughter did not predecease him, although she died during the probate proceedings. Her son sought to obtain income from the trust, but was rejected by the probate court based on the language of the will. The Court of Appeal affirmed, explaining: "[T]he testator set forth in his will a clearly expressed *condition precedent* to the vesting in appellant of any right to receive payments from the trust. That condition precedent was expressed in these words: '*Should my daughter . . . predecease me then in such event . . . .*' This condition was not fulfilled, the daughter having survived the testator. Where a specific condition must be fulfilled or performed prior to the vesting of an interest, the condition is a condition precedent. [Citations.] [¶] We find no uncertainty or ambiguity in the quoted language by which the testator declared the condition upon which appellant would be entitled to receive benefits from the trust. . . [¶] . . . [¶] It seems to us . . . reasonable to hold that when a testator has made a gift upon one clearly *expressed* condition it would violate the logical rule of *expressio unius est exclusio alterius* to read into the will an implied intent that the gift should be

---

[11] The principal was to go to the grandson's children. (*Estate of Kincaid, supra,* 174 Cal.App.2d at p. 85.)

made effective upon the fulfilment of some *different* and *unexpressed* condition." (*Id*. at pp. 88-89.)

Here, as in *Estate of Charters*, *supra*, 46 Cal.2d 227, the instrument directed that a certain amount go to the individual income beneficiaries. It would be contrary to the express language to conclude they were entitled to more. Although the reserve was created to provide additional income to those beneficiaries in certain specified circumstances, as in *Estate of Kincaid*, *supra,* 174 Cal.App.2d 84, the conditions that would have permitted individual income beneficiaries to receive sums from the reserve were not met. Moreover, to the extent Seaver's will favored any beneficiary above any other, it favors the Institute, making it residual beneficiary of the estate and beneficiary of a significant percentage of the principal when the residual trust expired, as well as residual beneficiary of the net annual income from the V Trust. Accordingly, the probate court reasonably concluded that the Institute was the intended recipient of the reserve when the Trust terminated.

Appellants contend to the contrary, that there was a clear intent to favor the individual income beneficiaries, supporting an implicit directive that the reserve go to them, citing *Brock v. Hall, supra,* 33 Cal.2d 885, *Estate of Petersen* (1969) 270 Cal.App.2d 89, and *Estate of Hubbard* (1954) 122 Cal.App.2d 942, 947. In each of those cases, the beneficiaries were the children of the testators/trustors, and the natural objects of their bounty; interpreting the will or trust

strictly in accordance with the language would have resulted in unfairness or absurdity which could not have been intended in view of the overall estate plan.[12] Here, the individual income beneficiaries of the V Trust were not Seaver's children and descendants, but his sisters, nieces and nephew, and their children and grandchildren. Nothing indicated these individuals were entitled to anything over and above the percentages specified if they failed to meet the conditions necessary to receive additional funds from the reserve. There is no obvious unfairness or absurdity in the language of the Trust, and we discern no overriding testamentary intent that would be frustrated by distribution of unallocated reserve income to the Institute. In short, reviewing the four corners of the instrument rather than focusing on specific language, does not lead to the conclusion that the conditions on the individual beneficiaries' receipt of

---

[12] For example, in *Brock v. Hall*, the testator left his estate to his two daughters in trust, to be distributed when they reached 35. The trust said the entire estate was to go to the surviving sister if the other died without issue or without having married; if a sister married and left a surviving husband, he would receive half her share, with the other half going to the surviving sister. One of the sisters died a widow, without issue, prior to reaching 35. There was no language covering that contingency. The court concluded: "[T]he paramount purpose of the trustor was to care for his daughters, and it would be absurd to say that he intended [the surviving daughter] to take all if [her sister] died unmarried and to have half if [her sister] left a surviving husband, but to receive nothing if [her sister] died a widow without issue." (*Brock v. Hall, supra,* 33 Cal. 2d at p. 891.)

the funds from the reserve should be removed and the reserve distributed to those beneficiaries.[13]

Finally, appellants contend in a footnote that the probate court erred in ruling that the individual trustees' conflict of interest was expressly or implicitly consented to by Seaver and did not impact respondents' right to bring the petition for instructions. Appellants cite authorities for the proposition that conflicted trustees should be removed, but do not explain how those authorities apply to the present situation, where the petition was filed to wind up the Trust and end the trustees' duties; nor do they suggest that a different result would have obtained had the individual trustees been removed prior to filing the petition. Accordingly, we need not address this contention. (See *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1247, 1248 [issue forfeited where single paragraph in brief devoted to the issue was "devoid of meaningful legal analysis"].)

---

[13] Appellants suggest that the intent to favor the individual income beneficiaries arises from the language stating "In exercising their discretion under any such trust, the trustees shall give primary consideration to the welfare and interests of beneficiaries receiving life income therefrom as against remaindermen." This language is of no assistance, as both the individual beneficiaries and the Institute are income beneficiaries.

DISPOSITION

The order is affirmed. Respondents are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.